

1989

c 50 Cemeteries Act, 1989

Ontario

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Bibliographic Citation

Cemeteries Act, 1989, SO 1989, c 50

Repository Citation

Ontario (1989) "c 50 Cemeteries Act, 1989," *Ontario: Annual Statutes*: Vol. 1989, Article 53.

Available at: http://digitalcommons.osgoode.yorku.ca/ontario_statutes/vol1989/iss1/53

CHAPTER 50

An Act to revise the Cemeteries Act

Assented to October 16th, 1989

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“burial site” means land containing human remains that has not been approved or consented to as a cemetery in accordance with this Act or a predecessor of this Act;

“by-laws”, when used in relation to a cemetery, means the rules under which a cemetery or crematorium is operated;

“cemetery” means land set aside to be used for the interment of human remains and includes a mausoleum, columbarium or other structure intended for the interment of human remains;

“cemetery services” means,

(a) in respect of a lot,

(i) opening and closing of a grave,

(ii) interring or disinterring human remains,

(iii) providing temporary storage in a receiving vault,

(iv) construction of a foundation for a marker,

(v) setting of corner posts,

(vi) providing,

(A) a tent or canopy,

(B) carrying and lowering devices, and

- (C) ground cover,
for an interment service, and
- (vii) preparing flower beds and planting flowers and shrubs,
- (b) in respect of a crypt or compartment in a mausoleum,
 - (i) opening, closing and sealing of the crypt or compartment,
 - (ii) providing temporary storage in a vault or crypt,
 - (iii) providing a tent or canopy for an interment service, and
 - (iv) providing elevating devices,
- (c) in respect of a niche or compartment in a columbarium,
 - (i) opening, closing and sealing of the niche or compartment, and
 - (ii) providing a tent or canopy for an interment service,
- (d) in respect of a crematorium, all services provided by the owner of the crematorium at the crematorium, and
- (e) in respect of a cemetery, such other services as are provided by the owner of the cemetery at the cemetery;

“cemetery supplies” includes interment vaults, markers, flowers, liners, urns, shrubs and artificial wreaths and other articles intended to be placed in a cemetery;

“columbarium” means a structure designed for the purpose of interring cremated human remains in sealed compartments;

“commercial cemetery” means a cemetery operated for the purpose of making a profit for the owner;

“crematorium” means a building fitted with appliances for the purpose of cremating human remains and includes everything incidental and ancillary thereto;

“Director” means a Director appointed under the *Ministry of Consumer and Commercial Relations Act*; R.S.O. 1980,
c. 274

“equity share” means a share of a class of shares that carries a voting right either under all circumstances or under some circumstances that have occurred and are continuing;

“human remains” means a dead human body and includes a cremated human body;

“income” means the interest or money earned, including the compounding thereof, by the investment of funds;

“inter” means the burial of human remains and includes the placing of human remains in a lot;

“interment rights” includes the right to require or direct the interment of human remains in a lot;

“interment rights holder” means a person with interment rights with respect to a lot and includes a purchaser of interment rights under the *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, or a predecessor of that Act;

“land registry office” means the land registry office or the land titles office in the area in which a cemetery is located;

“lot” means an area of land in a cemetery containing, or set aside to contain, human remains and includes a tomb, crypt or compartment in a mausoleum and a niche or compartment in a columbarium;

“marker” means any monument, tombstone, plaque, headstone, cornerstone, or other structure or ornament affixed to or intended to be affixed to a burial lot, mausoleum crypt, columbarium niche or other structure or place intended for the deposit of human remains;

“mausoleum” means a building or structure, other than a columbarium, used as a place for the interment of the human remains in sealed crypts or compartments;

“Minister” means the Minister of Consumer and Commercial Relations;

“municipality” means the corporation or other entity having municipal jurisdiction in the area in which a cemetery is located and includes a police village, city, town, village, township or improvement district or the council thereof;

“owner” means an owner of a cemetery or a crematorium;

“person” includes a board of trustees, local council of a municipality or other organization or group of persons organized for the purpose of operating or managing a cemetery;

“plot” means two or more lots in which the rights to inter have been sold as a unit;

“pre-need supplies or services” means cemetery supplies or services that are not required to be provided until the death of a person alive at the time the arrangements are made;

“prescribed” means prescribed by the regulations made under this Act;

“Registrar” means the Registrar appointed under this Act;

“sales representative” means,

- (a) a person who sells or offers for sale interment rights or cemetery supplies or services on behalf of a commercial cemetery, or
- (b) a person whose primary employment is selling interment rights or cemetery supplies or services;

“Tribunal” means The Commercial Registration Appeal Tribunal;

“trust fund” means a trust fund established for the purpose of this Act.

CONSENT TO ESTABLISH CEMETERY OR CREMATORIUM

Consent for
cemetery,
etc.

2. No person shall establish, alter or increase the capacity of a cemetery or crematorium without the consent of the Registrar.

Application
for consent

3.—(1) An applicant for consent shall apply to the Registrar and,

- (a) pay the prescribed fee;

- (b) submit the prescribed documents showing the layout of the cemetery and the location of existing or proposed plots, lots, structures and fixtures; and
- (c) if the applicant is the owner of a commercial cemetery or a cemetery of a class prescribed for the purpose of this clause, pay a deposit in a prescribed amount into a Care and Maintenance Fund.

(2) If the cemetery or crematorium is proposed to be established or already exists in an area with municipal organization, the applicant, before applying for the consent of the Registrar, must obtain the approval to the proposal of the appropriate municipality. Approval required

(3) If the cemetery or crematorium is to be established or enlarged to encroach on land, in an area without municipal organization, that is Crown land at the time of the application for consent, the applicant, before applying for the consent of the Registrar, must obtain the approval to the proposal of the Minister of Natural Resources. Idem

4. A municipality that receives a request for an approval required by subsection 3 (2) may hold public hearings to determine if the approval is in the public interest. Public hearings

5.—(1) A municipality, upon receiving a request for approval, shall give or refuse to give the approval within a reasonable time after receiving the request. Decision

(2) In considering a request for an approval, the principal factor shall be the public interest. Public interest

(3) A municipality shall, upon arriving at a decision on an application, Notice of decision

- (a) send a copy of the decision together with the reasons for it to the Registrar and to the applicant; and
- (b) publish notice of the decision in a local newspaper.

(4) The applicant, Registrar or any person with an interest therein may, within fifteen days after publication of the notice of the decision, refer the decision of a municipality to the Ontario Municipal Board for a hearing. Appeal

(5) Despite subsection (4), if an applicant or the Registrar does not receive a copy of a decision until after the decision is published, the fifteen days referred to in subsection (4) apply Idem

after the applicant or Registrar, as the case may be, receives the copy.

Representation

(6) The Registrar is entitled to make representations to the Ontario Municipal Board in any appeal under subsection (4).

Board decision

6.—(1) The Ontario Municipal Board may reverse the decision appealed from and substitute its own decision.

Idem

(2) A decision of the Board that is substituted under subsection (1) shall be deemed to be the decision of the municipality.

Certificate of consent

7.—(1) The Registrar shall give a certificate of consent to the establishment, alteration or increase in the capacity of a cemetery or crematorium, as the case may be, if,

- (a) the applicant has the approval of the municipality or the Minister of Natural Resources;
- (b) the applicant is licensed to own that cemetery and is and will be on the granting of the licence in compliance with the requirements of this Act and the regulations and the laws intended for the protection of the environment and of health; and
- (c) where neither approval referred to in clause (a) is required, the Registrar is satisfied that the consent is in the public interest.

Notice of refusal to issue

(2) The Registrar, on refusing to give a certificate of consent, shall advise the applicant, in writing, of,

- (a) the reason for the refusal; and
- (b) the applicant's right to appeal.

Appeal

(3) An applicant who receives a notice under subsection (2) may appeal to the Tribunal within fifteen days after receiving the notice.

Order by Tribunal

(4) If the Tribunal finds that the applicant is in compliance with clauses (1) (a) and (b) or that giving the consent is in the public interest, as the case may be, the Tribunal shall order the Registrar to issue the certificate of consent applied for or a consent in a modified version.

Idem

(5) Upon receiving an order under subsection (4), the Registrar shall issue the certificate as ordered.

(6) A certificate of consent shall contain a sufficient Registration description of the cemetery or crematorium so that the certificate may be registered in the appropriate land registry office.

(7) Upon registration of a certificate of consent, the land Effect of registration described therein becomes a cemetery.

CLOSING CEMETERY

8.—(1) In this section and in sections 9, 10, 11, 12 and 13, Closing cemetery a reference to a cemetery includes any part of a cemetery.

(2) The Registrar may order a cemetery closed if the closing is in the public interest. Idem

(3) An order shall not be made under subsection (2) until, Notice

(a) notice of the intention to make the order is given in the manner and to the persons prescribed; and

(b) interested persons are given the opportunity to make submissions to the Registrar within such time as is prescribed.

(4) Notice is not required if, Idem

(a) the request is from the owner;

(b) no interments have been made in the cemetery to be closed; and

(c) the consent of all affected interment rights holders has been obtained.

9.—(1) In an order to close a cemetery, the Registrar Order may,

(a) declare a cemetery or a portion thereof closed;

(b) require the owner to disinter all human remains therein and specify the manner of disinterment and the manner and place of reintering or dealing with the remains;

(c) require the owner to remove any markers and relocate them to a specified place; and

(d) require the owner to provide or acquire equivalent interment rights for all holders of interment rights with respect to unused lots in the cemetery.

- Substitution (2) In an order to close a cemetery, the Registrar may designate another person to do anything that the owner may be required to do.
- Notice (3) The Registrar shall give every person who made a submission notice of the order and at the same time advise the person of the right of appeal.
- Coming into force (4) Subject to subsection (5), an order to close a cemetery comes into force thirty days after it is made unless there is an appeal filed before the order comes into force or the order sets out a later date.
- Idem (5) If submissions were made in respect of the order, the order comes into force thirty days after notice has been given to each person who made a submission unless there is an appeal filed before the order comes into force or the order sets out a later date.
- Idem (6) An order that is appealed comes into force upon being upheld by the Tribunal.
- Appeal **10.** A person with an interest therein may appeal, to the Tribunal,
- (a) an order to close a cemetery any time before the order comes into force; or
 - (b) a refusal to order a cemetery closed.
- Certificate **11.**—(1) The Registrar, upon being satisfied that the requirements in an order to close a cemetery have been complied with, shall issue a certificate, with a legal description of the land involved, that the cemetery is closed.
- Idem (2) Despite subsection (1), an applicant therefor is entitled to a certificate that a cemetery is closed if the cemetery had been closed by the Lieutenant Governor in Council but a certificate issued under subsection 59 (7) of the *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, or a predecessor of that subsection has not been registered.
- Registration (3) A certificate issued under this section may be registered in the appropriate land registry office.
- Effect of registration (4) Upon registration of a certificate of closing, the land described therein ceases to be a cemetery.
- Maintenance fund **12.**—(1) Where any money has been paid into a care and maintenance fund with respect to a cemetery that is to be

closed, the Registrar shall direct that money to be transferred to the trustee of the fund maintained by the owner of the cemetery into which the human remains are to be reinterred or where the interment rights are to be exercised.

(2) The amount transferred under subsection (1) is a credit against the amount required to be paid into the fund by the owner of the cemetery into which the human remains are to be reinterred or where the interment rights are to be exercised. Idem

13. Where any money has been paid into a pre-need assurance fund with respect to interment rights in a cemetery that is to be closed, the Registrar shall direct that money to be paid to the trustee of the fund maintained by the owner of the cemetery where alternative interment rights have been made available for the holders of interment rights in the cemetery to be closed. Pre-need assurance fund

LICENCES

14. No person shall own a cemetery or crematorium unless licensed under this Act to own that cemetery or crematorium. Licence required

15.—(1) A person may apply to the Registrar for a licence to own a cemetery or crematorium. Licence to own

(2) An applicant is entitled to a licence except if, Requirements

- (a) the applicant cannot reasonably be expected to be financially responsible in the operation of a cemetery or crematorium;
- (b) the past or present conduct of the persons referred to in subsection (3) affords reasonable grounds for belief that the applicant will not operate in accordance with the law and with integrity and honesty;
- (c) the applicant or managing employees of the applicant do not have the experience and competence required to manage the cemetery or crematorium in accordance with the law;
- (d) the applicant is carrying on activities that are, or will be if the applicant is licensed, in contravention of this Act or the regulations;
- (e) the applicant will, if licensed, be carrying on activities under this Act that are in contravention of another Act or a municipal by-law;

- (f) the applicant is unable to provide the resources and facilities required to manage a cemetery or crematorium; or
- (g) the applicant or an employee or agent of the applicant has made a false statement or provided false information in an application for a licence.

Idem

(3) Clause (2) (b) applies to the following persons:

1. The applicant.
2. An officer or director of the applicant.
3. A person holding more than 10 per cent of the equity shares of the applicant or an officer or director of such person.
4. Any person having a beneficial interest in the operation of the business of the applicant or licensee.

Issue of
licence

(4) The Registrar shall issue a licence to own an identified cemetery or crematorium to an applicant therefor who pays the prescribed fee, complies with the regulations and is not disentitled under subsection (2).

Conditions
attaching to
licence

(5) A licence is subject to such conditions as may be consented to by the applicant, imposed by the Tribunal or prescribed.

Notice

(6) If the Registrar intends to refuse to issue a licence, the Registrar shall give the applicant notice of and reasons for the intention and, at the same time, advise the applicant of the right to appeal.

Appeal

(7) An applicant who receives a notice under subsection (6) may appeal the intended refusal to the Tribunal within fifteen days after receiving the notice.

Refusal to
issue licence

(8) If no appeal is filed under subsection (7), the Registrar may refuse to issue the licence applied for.

Revocation
of owner's
licence

16.—(1) The Registrar may revoke or refuse to renew a licence to own a cemetery or a crematorium if,

- (a) the conduct or situation of the licensee is such as to disentitle the licensee from being granted a licence;

- (b) where the licensee is a corporation, the shareholders of the corporation have changed in the manner and to the extent prescribed; or
- (c) the Registrar has reasonable and probable grounds to believe that the continued operation of the cemetery or crematorium by the licensee,
 - (i) creates a risk to public health, safety or decency, or
 - (ii) will result in a financial loss by members of the public because provisions of this Act or the regulations are not being complied with.

(2) If the Registrar intends to revoke or to refuse to renew a licence, the Registrar shall give the licensee notice of and reasons for the intention and, at the same time, advise the licensee of the right to appeal. Notice

(3) Any licensee who receives a notice under subsection (2) may appeal the intended revocation or refusal to the Tribunal within fifteen days after receiving the notice. Appeal

(4) If an appeal has been filed under subsection (3), the Registrar shall not revoke the licence unless the Tribunal determines that the licence should be revoked. Delay

(5) If no appeal is filed under subsection (3), the Registrar may revoke the licence after the time for appeal has expired. Where no appeal

(6) Section 14 does not apply to an owner whose licence is revoked so long as the Registrar is satisfied that the owner is making reasonable efforts to sell the cemetery or crematorium. Exception to licensing requirement

17.—(1) The Director may appoint a manager to operate a cemetery or crematorium in the place of the owner if, Appointment of manager

- (a) the Director has reasonable and probable grounds, based on a statement under oath, to believe that the owner is doing or is about to do something in the operation of the cemetery or crematorium that,
 - (i) creates or is likely to create a risk to public health, safety or decency, or
 - (ii) is causing or is likely to cause financial loss to members of the public; or

(b) the owner's licence is revoked.

Powers of
manager

(2) A manager appointed under subsection (1) has all the powers of the owner with respect to the operation of the cemetery or crematorium including the power to exclude the owner and, if the owner is a corporation, the directors or officers of the corporation, from the premises of the business.

Effect of
appointment

(3) From the appointment of a manager under subsection (1) until the appointment is cancelled, the owner being replaced does not have the authority to deal with any assets or trust funds relating to the cemetery or crematorium and shall not be involved in the operation of the cemetery or crematorium.

Appeal

(4) Any person affected by an appointment of a manager may apply to a judge of the Supreme Court for an order cancelling the appointment and the order may include such directions and conditions as seem appropriate.

Selling
interment
rights

18.—(1) No person shall sell interment rights unless that person does so as an agent acting on behalf of a licensed owner.

Selling
supplies, etc.

(2) No person shall act as a sales representative on behalf of an owner unless that person is licensed as a sales representative and represents an owner specified in the sales representative's licence.

Exception for
owners

(3) Subsections (1) and (2) do not apply to preclude a person licensed as an owner from selling rights, services or supplies to be used in or provided at a cemetery or crematorium owned by that person.

Licence to
sell

19.—(1) An individual may apply to the Registrar for a licence to act as a sales representative on behalf of an owner.

Requirements
for licence

(2) An applicant is entitled to a licence except if,

- (a) the past or present conduct of the applicant affords reasonable and probable grounds for believing that the applicant will not carry on business in accordance with the law and with integrity and honesty;
- (b) the applicant, in receiving the licence, would be in a position of apparent conflict of interest;
- (c) the applicant does not have a position with a licensed owner or a commitment to be hired by a licensed owner upon receiving a licence; or

- (d) the applicant has made a false statement or provided false information in an application for a licence.

(3) A conviction for an offence that involves misrepresentation or a lack of integrity or honesty is evidence, in the absence of evidence to the contrary, that the person convicted will not carry on business in accordance with the law and with integrity and honesty within the meaning of clause (2) (a). Past conduct

(4) An applicant's intention to work for more than one owner is evidence, in the absence of evidence to the contrary, of an apparent conflict of interest. Conflict of interest

(5) The Registrar shall issue a licence to act as a sales representative to every applicant therefor who pays the prescribed fee, complies with the regulations and is not disentitled under subsection (2). Issue of licence

(6) A licence is subject to such conditions as may be consented to by the licensee, imposed by the Tribunal or prescribed. Conditions attaching to licence

(7) If the Registrar intends to refuse to issue a licence, the Registrar shall give the applicant notice of and reasons for the intention and, at the same time, advise the applicant of the right to appeal. Notice

(8) An applicant who receives a notice under subsection (7) may appeal the intended refusal to the Tribunal within fifteen days after receiving the notice. Appeal

(9) If no appeal is filed under subsection (8), the Registrar may refuse to issue the licence. Refusal to issue licence

20.—(1) The Registrar may revoke, suspend or refuse to renew a sales representative's licence if the conduct or situation of the licensee is such as to disentitle the licensee from being granted a licence. Revoking, suspending or refusing to renew sales licence

(2) If the Registrar intends to revoke, suspend or refuse to renew a licence, the Registrar shall give the licensee notice of and reasons for the intention and, at the same time, advise the licensee of the right to appeal. Notice

(3) If there are grounds to suspend a licence and the Registrar considers it to be in the public interest that the licence be suspended immediately, the Registrar may, by order, suspend a sales representative's licence with the order taking effect when it is made. Immediate suspension

Idem (4) An immediate suspension expires fifteen days after it is appealed to the Tribunal unless, before the fifteen days expire, the Tribunal extends the suspension.

Appeal (5) Any licensee who receives a notice under subsection (2) may appeal the intended revocation or suspension to the Tribunal within fifteen days after receiving the notice.

Idem (6) Any licensee whose licence is suspended under subsection (3) may appeal the suspension to the Tribunal.

Delay (7) If an appeal has been filed under subsection (5), the Registrar shall not revoke or suspend the licence unless the Tribunal determines that the licence should be revoked or suspended.

Where no appeal (8) If no appeal is filed under subsection (5), the Registrar may revoke or suspend the licence after the time for appeal has expired.

Application **21.**—(1) A person who is refused a licence or a renewal of a licence under this Act may apply for a licence only after one year has passed since the refusal.

Idem (2) A person whose licence is revoked under this Act may apply for a licence only after one year has passed since the revocation.

Continuation **22.** The licence of a licensee who has applied for a renewal of the licence continues until,

(a) the renewal is granted; or

(b) if the licensee is served with a notice that the Registrar intends to refuse to renew, the time for appeal has expired or, if an appeal is required, the matter has been finally determined.

CONSUMER PROTECTION

Interment rights **23.**—(1) An interment rights holder may require, by written demand, the owner to repurchase the rights at any time before they are used.

Idem (2) Every owner who receives a demand made under subsection (1) shall repurchase the interment rights within thirty days after receiving the demand.

Idem (3) The repurchase price of interment rights shall be determined in the prescribed manner.

(4) An interment rights holder or the personal representative of the holder has the right to inter any human remains in a lot or other facility approved under this Act in accordance with the by-laws governing the facility. Idem

(5) An interment rights holder or the personal representative of the holder may erect a commemorative marker on a lot or other receptacle for human remains if the erection of the marker is not in contravention of the by-laws governing the facility. Idem

(6) Every person has the right to reasonable access to a lot at any time except as prohibited by the by-laws governing the facility. Idem

(7) An interment rights holder and the relatives of any person whose remains are interred in a cemetery have the right to decorate the appropriate lot if the decoration is not in contravention of the by-laws governing the facility. Idem

(8) Subsection (1) does not apply to require repurchase of interment rights in a plot in which any interment rights have been exercised. Exception

24.—(1) A purchaser of pre-need supplies or services from an owner may cancel, by written notice to the owner, the contract to purchase at any time before the services or the supplies are provided or if the owner contravenes subsection (5). Pre-need services or supplies

(2) Subsection (1) or (5) does not apply if the supplies or services are provided within thirty days after the contract is made because of the death of the person for whom the supplies or services were contracted. Idem

(3) Subject to subsection (4), an owner who receives a notice that a contract is cancelled under this section shall refund to the purchaser all money, together with all income thereon, received under the contract within thirty days after receiving the notice. Idem

(4) An owner to whom this section applies may retain a service fee determined in the prescribed manner unless the contract is cancelled within thirty days after it is made. Idem

(5) No owner shall provide pre-need supplies or services under a contract within the thirty-day period immediately following the day the contract is made. Prohibition

Application (6) This section applies to contracts for pre-need supplies or services whether the contracts were made before or after this section comes into force.

Contract requirements **25.**—(1) A contract for the purchase of interment rights or cemetery supplies or services is not enforceable by an owner unless,

- (a) it is written, signed by both parties and complies with the regulations;
- (b) it sets out the purchaser's cancellation rights under this Act and whether or not cemetery supplies or services are to be provided before the death of the person for whom they are contracted;
- (c) the owner complies with subsections (2) and (3); and
- (d) the owner delivers a signed copy of the contract to the purchaser at the time the contract is made.

Idem (2) An owner who sells interment rights must deliver to the purchaser at the time the contract is made a copy of the by-laws of the cemetery and a certificate of interment rights.

Idem (3) An owner who sells pre-need supplies or services must set out in the contract exactly what the supplies or services are and the price charged for them.

Refund with interest (4) An owner who receives money under a contract that is not enforceable because of the application of this section shall refund to the purchaser, immediately upon written demand, with interest at the prescribed rate, all money received.

Idem (5) Subsection (4) applies even though the owner has paid the money into a trust fund that is not accessible to the owner.

Exception (6) Subsection (4) does not apply, in the case of interment rights, after the rights are used or, in the case of cemetery supplies or services, after the supplies or services are provided.

Public information **26.** Every owner shall make such information as is prescribed available to the public in the manner and form prescribed.

Price list **27.**—(1) Every owner shall file with the Registrar a price list of all interment rights and cemetery services and supplies

that may be sold and all charges that may be made by that owner.

(2) No owner shall charge or collect or receive money for interment rights or cemetery supplies or services that is more than the price for the rights, supplies or services filed by the owner with the Registrar and not disallowed. Idem

(3) The Registrar, upon receiving a price list, may disallow, within thirty days after the list is filed, any price that, in the opinion of the Registrar, is excessive or significantly higher than current market price for the supplies, services or rights within the applicable area. Approval of list

(4) The Registrar shall give immediate written notice to the owner who filed the price list of any price on the list that is disallowed and, in the notice, shall give the reasons for the disallowance. Notice of disallowance

(5) If the Registrar disallows a price on a price list, the owner who filed the list may appeal the disallowance to the Tribunal. Appeal

(6) An owner who has charged any person a price that is disallowed by the Registrar shall pay, forthwith, to that person the difference between the price charged and the price allowed. Repayment

28.—(1) If the Registrar believes, on reasonable and probable grounds, that any person licensed under this Act has made a false or misleading public representation or a representation that is in contravention of this Act or the regulations, the Registrar shall order that person to stop making the representation and, in the order, shall set out the reasons for the order. Advertising

(2) A person who receives an order under subsection (1) shall immediately comply with the order and shall refrain from making the representation, in any form, in the future. Compliance with order

(3) Any person who receives an order under subsection (1) may appeal the order to the Tribunal. Appeal

(4) The Tribunal may issue a stay of any order made by the Registrar under subsection (1). Stay of order

29.—(1) No person shall contact, in any way, a person in a hospital, nursing home or such other institution as is prescribed for the purpose of suggesting that a contract for the Soliciting prohibited

purchase of interment rights or cemetery supplies or services be made.

Idem

(2) No person shall contact, by telephone or in person, a person for the purpose of suggesting that a contract for the purchase of interment rights or cemetery supplies or services be made.

Exception

(3) This section does not prohibit any contact made at the request of the person being contacted.

Regulations

(4) The Lieutenant Governor in Council may make regulations defining "contract" for the purpose of this section.

Abandoned
interment
rights

30.—(1) A cemetery owner may apply to the Registrar for a declaration that interment rights are abandoned.

Idem

(2) An application may be made under subsection (1) only in respect of interment rights that had been sold at least twenty years before the application and have not been used.

Inquiry

(3) The Registrar, on receiving an application under subsection (1), shall make such inquiry and direct the applicant to give such notices as seem reasonable in the circumstances.

Declaration

(4) Upon being satisfied that the rights are abandoned, the Registrar shall issue a declaration to that effect.

Notice

(5) The Registrar shall give notice of the declaration or the decision to not make the declaration to the applicant and to every person who has indicated to the Registrar an interest in the matter.

Appeal

(6) Any person who has an interest in the matter may appeal the decision of the Registrar to the Tribunal within thirty days after notice of the decision is given under subsection (5).

Right to sell
abandoned
rights

31. A cemetery owner may resell interment rights that have been declared abandoned,

(a) if there is no appeal, at the end of the time for appeal; or

(b) if there is an appeal, when the appeal has been finally determined supporting the declaration.

Rights
holder's
protection

32.—(1) Any person whose interment rights have been resold after being declared abandoned may apply to the Registrar for redress.

(2) The Registrar, upon receiving an application under subsection (1), shall order the cemetery owner or the owner's successor, as the case may be, to provide, subject to subsection (6), better or equivalent interment rights in that cemetery or to refund an amount determined as prescribed. Idem

(3) Any person whose interment rights have been declared abandoned but have not been resold may apply to the Registrar to have those rights restored. Idem

(4) The Registrar, upon receiving an application under subsection (3), shall order that the declaration be cancelled and that the rights be restored to the person entitled thereto. Idem

(5) This section does not apply in respect of interment rights in cemeteries that are abandoned. Exception

(6) If the cemetery referred to in subsection (2) is one in which interment rights are not available but the owner owns a cemetery in which interment rights are available, the applicant shall be given the option of accepting better or equivalent interment rights in that cemetery. Idem

33.—(1) If a marker has been erected on a lot that is the subject-matter of a declaration of abandonment, the cemetery owner shall remove and store it at the owner's expense for at least twenty years. Markers

(2) If an order is made under subsection 32 (2) to provide alternate interment rights, the cemetery owner shall re-erect the marker at the new site at the owner's expense. Idem

(3) If subsection (2) does not apply, the cemetery owner may dispose of the marker at the expiration of the twenty-year period. Idem

34.—(1) A cemetery owner who has available space shall provide, upon receiving a written instruction from a welfare administrator, Assisted burials, cemetery

(a) a lot for the interment of the remains of any person referred to in the instruction;

(b) opening and closing services in conjunction with the interment; and

(c) such other related services as are prescribed.

(2) A crematorium owner shall provide, upon receiving a written instruction from a welfare administrator, Crematorium

- (a) a crematorium service for the remains of any person referred to in the instruction; and
- (b) such other related services as are prescribed.

Exception

(3) Subsections (1) and (2) do not apply to require a religious organization to inter or cremate the remains of a person who is disentitled to burial or cremation in a cemetery or crematorium owned by that organization.

Payment

(4) An owner who provides a service under this section is entitled to be paid the prescribed amount for the service by the welfare administrator.

Welfare administrator

(5) The Lieutenant Governor in Council may make regulations defining “welfare administrator” for the purpose of this section and designating persons by title or job description who are considered welfare administrators for this purpose.

TRUST FUNDS

Care and maintenance trust funds
1987, c. 33

35.—(1) Every cemetery owner who sells, assigns or transfers interment rights shall establish with a corporation registered under the *Loan and Trust Corporations Act, 1987*, with that corporation as trustee, a trust fund designated the “Care and Maintenance Fund” for the purpose of providing money for the care and maintenance of the cemetery.

Payments into fund

(2) An owner who is required to establish a fund under this section shall pay into the fund prescribed amounts within the prescribed times.

Payments out of fund

(3) A trustee of a fund established under this section shall pay the income from the fund, after deducting therefrom the trustee’s fees, to the owner of the cemetery involved.

Use of money

(4) An owner receiving money pursuant to subsection (3) shall use the money for the upkeep of the cemetery and the markers and structures therein in the prescribed manner.

Capital portion

(5) No trustee of a fund established under this section shall pay out any of the capital portion of the fund.

Idem

(6) Subsection (5) does not apply to preclude a trustee from transferring the fund, with the consent of the Registrar, to another trustee.

Municipal owners

(7) Despite subsection (1), an owner that is a municipality may act as the trustee of a Care and Maintenance Fund established by that municipality.

36.—(1) Every owner who sells pre-need cemetery supplies or services shall establish with a corporation registered under the *Loan and Trust Corporations Act, 1987*, with that corporation as trustee, a trust fund designated as the “Pre-need Assurance Fund”.

Pre-need
assurance
trust funds
1987, c. 33

(2) Subsection (1) applies to an owner in respect of sales made by a person that the owner is associated or affiliated with in a manner that is prescribed.

Idem

(3) An owner who is required to establish a fund under this section shall pay into the fund all money received for pre-need supplies or services within the prescribed times.

Payments
into fund

(4) A trustee of a fund established under this section shall hold all money received for the benefit of the purchaser until that portion of the contract in respect of which the money was paid is completed.

Trust funds

(5) When a portion of a contract is completed, the trustee shall pay to the owner the lesser of,

Idem

(a) the current market price filed with the Registrar for the supplies or services; or

(b) an amount equal to the payments made for the supplies or services together with income accrued on those payments.

(6) If the amount referred to in clause (5) (b) exceeds the price referred to in clause (5) (a), the trustee shall pay the amount of the excess to the owner.

Idem

(7) If a contract in respect of which money is held in the trust fund is cancelled, the trustee shall pay, to the owner, the amount of the initial payments together with income accrued on that amount.

Prior
cancellation

(8) Subject to subsection 24 (4) (retention of service fee), an owner who receives a payment under subsection (7) shall pay the amount to the purchaser involved within twenty days after receiving the payment.

Payment to
purchaser

(9) An owner who receives a payment under subsection (6) shall pay the amount to the purchaser or, if an interment has taken place, to the estate of the person interred within twenty days after receiving the payment.

Idem

Municipal
owners

(10) Despite subsection (1), an owner that is a municipality may act as the trustee of a Pre-need Assurance Fund established by that municipality.

Restrictions
on trust
agreements
R.S.O. 1980,
c. 512

37. No investment of money in a trust established pursuant to this Act shall be made except as permitted under the *Trustee Act*.

Marker
installation

38.—(1) Every person installing a marker in a cemetery shall pay to the cemetery owner the prescribed amount.

Payment into
fund

(2) An owner receiving money pursuant to subsection (1) shall pay the money into the Care and Maintenance Fund established for that cemetery.

Idem

(3) An owner who does not receive payment under subsection (1) for a marker shall pay into the Care and Maintenance Fund a prescribed amount.

Trust funds
held by
owner

39.—(1) All money received by an owner that is required to be paid into a trust fund but that is not immediately turned over to a trustee of a trust fund shall be deposited by the owner in a trust account with a credit union or caisse populaire registered under the *Credit Unions and Caisses Populaires Act*, a chartered bank of Canada, the Province of Ontario Savings Office or a trust or loan corporation registered under the *Loan and Trust Corporations Act, 1987*.

R.S.O. 1980,
c. 102

1987, c. 33

Idem

(2) Money deposited by an owner in a trust account under subsection (1) shall be placed by the owner into a trust fund or otherwise paid out in accordance with this Act or the regulations within the time prescribed.

Providing
information,
etc.

40.—(1) The Registrar or the Public Trustee may require any owner or trustee to provide,

- (a) any information on trust accounts or trust funds that the owner or trustee is involved with; and
- (b) audited financial statements on any trust account or trust fund relating to a cemetery or crematorium that the owner or trustee is involved with.

Idem

(2) Every owner or trustee who receives a request pursuant to subsection (1) shall forthwith provide all the information or statement required or an explanation as to why it is not possible to provide the information or statement.

Surrogate
Court

41.—(1) The Registrar or the Public Trustee may apply to the Surrogate Court to pass the accounts of any trust fund.

(2) The court, on passing any account, may review and pass upon any agreement made by an owner of a cemetery or crematorium. Idem

(3) The court, on passing any account, may make any order that it considers necessary to ensure that the trust is carried out. Idem

42. No cemetery or crematorium owner shall charge or receive any compensation or payment for the effort or expense of establishing or maintaining a trust fund. No compensation to owner

43.—(1) Despite subsections 35 (1) and 36 (1), an owner who does not have a practical alternative may require the Public Trustee to act as a trustee for that owner's Care and Maintenance Fund or Pre-need Assurance Fund. Use of Public Trustee

(2) The Registrar and the Public Trustee have an interest in all trust funds. Interested parties

CEMETERY AND CREMATORIUM OPERATIONS

44.—(1) Every cemetery owner shall maintain, without charge to interment rights holders, the grounds of the cemetery, including all lots, structures and markers, to ensure the safety of the public and to preserve the dignity of the cemetery. Maintenance by cemetery owner

(2) Despite subsection (1), an owner of a non-commercial cemetery may charge interment rights holders, at a rate approved by the Registrar, for the maintenance of lots and markers that were sold before 1955 if there were no trust funds collected for that purpose. Exception

45. No owner shall carry on business, in a manner prescribed, in conjunction with a person licensed to operate a funeral establishment or transfer service. Operating with funeral establishment, etc.

46. Every cemetery owner shall ensure that all interments in the cemetery are carried out in a decent and orderly manner and that quiet and good order are maintained in the cemetery at all times. Good order

47. No person shall inter human remains except in a cemetery that has been consented to by the Registrar and is owned by an owner licensed under this Act. Interment in cemetery only

48. If a marker in a cemetery presents a risk to public safety because it is unstable, the owner of the cemetery shall Repairing markers

do whatever is necessary by way of repairing, resetting or laying down the marker so as to remove the risk.

Mortgage on cemetery

49.—(1) No encumbrance or charge on a cemetery or crematorium is enforceable unless it was given as security for money borrowed for,

- (a) the purpose of improving the facilities provided;
- (b) the purpose of acquiring land for a cemetery or crematorium; or
- (c) a purpose, approved by the Registrar, relating to the operation of the cemetery or crematorium.

Restriction

(2) No encumbrancer claiming an interest in a cemetery or crematorium may deal with the cemetery or crematorium except in accordance with this Act.

By-laws

50.—(1) No person shall operate a cemetery or crematorium except in accordance with the by-laws applying to that cemetery or crematorium.

Owner's by-laws

(2) An owner of a cemetery or crematorium may make by-laws affecting the operation of the cemetery or crematorium.

When effective

(3) No by-law made by an owner is effective until it is filed with and approved by the Registrar.

Prescribed by-laws

(4) The Lieutenant Governor in Council may make regulations prescribing by-laws that apply to cemeteries or crematoria or to any prescribed classes of cemeteries or crematoria.

Notice of by-laws

(5) An owner filing a by-law shall give such notice as is prescribed to such classes of persons as are prescribed.

Approval by Registrar

(6) A by-law filed with the Registrar under this section shall be approved by the Registrar unless the approval is not in the public interest or the effect of the by-law is to give the owner an unreasonable or unfair competitive advantage over another supplier of cemetery services or supplies.

Revocation of by-laws

(7) The Registrar may revoke any by-law that the Registrar could have refused to approve under subsection (6).

Idem

(8) Subsection (7) applies even though the Registrar has previously approved the by-law.

Notice of disallowance or revocation

(9) If the Registrar intends to refuse to approve or revoke a by-law, the Registrar shall give the owner notice of the inten-

tion and, at the same time, advise the owner of the right to appeal.

(10) An owner who receives a notice under subsection (9) may appeal the intended refusal or revocation to the Tribunal within fifteen days after receiving the notice. Appeal

(11) If an appeal is filed against an intended revocation, the Registrar shall not revoke the by-law unless the Tribunal determines that the by-law should be revoked. Delay in revocation

(12) If no appeal is filed against an intended revocation, the Registrar may revoke the by-law after the time for appeal has expired. Where no appeal

51.—(1) Subject to subsection (2), no person shall disinter any human remains without, Disinterment

(a) the prior consent of the interment rights holder; and

(b) notifying the proper medical officer of health.

(2) Subsection (1) does not apply to a disinterment ordered by, Where consent not required

(a) a court of competent jurisdiction;

(b) a coroner appointed under the *Coroners Act*;

R.S.O. 1980,
c. 93

(c) the Attorney General or Solicitor General for Ontario; or

(d) the Registrar under section 9.

(3) For the purpose of clause (1) (a), the consent of the Registrar may be substituted for that of the interment rights holder if, Idem

(a) the whereabouts of an interment rights holder are not known;

(b) the interment rights holder is not readily ascertainable; or

(c) the interment rights holder is not able to consent.

(4) No person shall disinter human remains except in accordance with the regulations. Compliance with regulations

Exception (5) Clause (1) (b) does not apply to the disinterment of cremated human remains.

Consent of Registrar **52.**—(1) The Registrar, before consenting to a disinterment, shall consider whether any known person may have an interest in the disposition of the remains and, if there may be such a person, shall order that notice of the intention to disinter be given.

Notice of intention (2) A notice of intention to disinter shall be given in the manner and form set out in the order.

Objections (3) Any person objecting to a disinterment may file a written objection with the Registrar at any time before the consent of the Registrar is given.

Idem (4) If any person files an objection to a disinterment, the Registrar shall determine whether that person has an interest in the remains and, if so, shall ascertain the person's wishes.

Conditions for consent (5) In giving a consent to a disinterment, the Registrar shall take into account the wishes of any person with an interest in the remains and make the consent subject to such conditions as the Registrar considers appropriate.

Notice of decision (6) Notice of the Registrar's decision shall be given to the person who applied for the consent, to any person to whom notice is given under subsection (1) and to any person filing an objection.

Appeal (7) A person receiving a notice under subsection (6) may appeal, to the Tribunal, the Registrar's decision within fifteen days after receiving the notice.

Delay (8) If an appeal is filed under subsection (7), the Registrar shall not consent to the disinterment unless the Tribunal determines that the disinterment should proceed.

Where no appeal (9) If no appeal is filed under subsection (6), the Registrar may consent to the disinterment after the time for appeal has expired.

Attendance by medical officer **53.**—(1) A medical officer of health has the authority to attend at, supervise and direct a disinterment.

Diseases (2) If a medical officer of health determines that remains are those of a person who died of a communicable disease within the meaning of the *Health Protection and Promotion Act, 1983*, the remains shall not be dealt with in any way except as prescribed by the regulations made under that Act.

54. No person shall remove human remains from a cemetery unless a certificate of a medical officer of health or the cemetery owner confirming that this Act and the regulations have been complied with is affixed to the container.

Certificate required

55. A burial certificate under the *Vital Statistics Act* is not required to reinter human remains that have been disinterred in accordance with this Act and the regulations.

R.S.O. 1980, c. 524, does not apply

56.—(1) No person shall cremate human remains except in a crematorium that has been established with the consent of the Registrar and is owned by an owner licensed under this Act.

Cremation

(2) No person shall cremate human remains,

Prohibitions

- (a) for which there is not a coroner's certificate supplied by the Ministry of Consumer and Commercial Relations;
- (b) in a container made of, or containing, non-flammable or hazardous material or a prescribed material; or
- (c) in which a pacemaker or other prescribed device is implanted.

(3) Except if required by a welfare administrator or for the purpose of compliance with this Act or the regulations made under this Act, a crematorium owner has the right to refuse to cremate any human remains.

Right to refuse

57. Every crematorium owner shall ensure that all cremations in the crematorium are carried out in a decent and orderly manner and that quiet and good order are maintained in the crematorium at all times.

Good order

58.—(1) Any person who purchases a cremation service shall deposit, at the request of the crematorium owner, a prescribed amount with the owner to cover the cost of interring the cremated remains.

Deposit re disposal

(2) An owner receiving money under subsection (1) shall hold the money in trust.

Held in trust

(3) If the cremated remains are claimed by the interment rights holder within one year after the cremation, the owner shall refund the money to the person entitled thereto at the time of the claim.

Refund

Owner's
compensation

(4) If, after one year, the cremated remains have not been claimed and the owner has made reasonable efforts to contact the representatives of the deceased, the owner may inter them and is then entitled to the money held in trust as compensation.

Neglected
cemetery

59.—(1) A municipality may order a cemetery owner who does not keep the cemetery in good order and repair to restore it to good order and repair.

Appeal

(2) An owner may appeal, to the Registrar, an order to restore within fifteen days after receiving the order.

Idem

(3) The Registrar, on receiving an appeal, shall invite submissions from the owner and the municipality and shall make such other inquiries as are appropriate in the circumstances.

Idem

(4) After considering submissions made and the circumstances, the Registrar shall confirm or reverse the order of the municipality or substitute his or her order for that of the municipality.

R.S.O. 1980,
c. 484
does not
apply
Repairs

(5) The *Statutory Powers Procedure Act* does not apply to an appeal under this section.

(6) If an owner does not restore a cemetery as specified in an order given under subsection (1) within such reasonable time as is set out in the order, the municipality may have the required work done and recover the costs thereof from the owner.

Abandoned
cemetries

60.—(1) An application to declare a cemetery abandoned may be made to a judge of the District Court if the owner of the cemetery,

(a) cannot be found or is unknown;

(b) is unable to maintain it;

(c) was a corporation that was dissolved; or

(d) is not licensed as an owner under this Act.

Application

(2) An application to declare a cemetery abandoned may be made by the owner of the cemetery, the municipality or the Registrar.

Notice of
application

(3) An applicant under subsection (2) must give notice of the application to the other persons referred to in subsection (2).

(4) The municipality is responsible for the cost of an application under this section including the cost of a survey of the land involved. Costs

(5) Despite subsection (4), an owner who makes an unsuccessful application is responsible for the costs referred to in subsection (4). Idem

(6) A judge to whom an application is made under subsection (1), upon being satisfied that there is a basis for the application, shall, by order, declare the cemetery that is the subject-matter of the application to be abandoned. Declaration

(7) Upon a declaration that a cemetery is abandoned being registered in the appropriate land registry office, the municipality becomes the owner of the cemetery with all the rights and obligations in respect to the cemetery and the assets, funds and trust accounts related thereto that the previous owner had. Municipality becomes owner

(8) A declaration under this section may exempt the municipality being declared the owner from any provision of this Act or the regulations that it would be inappropriate, in the circumstances, for a new owner to be subject to. Exemptions

(9) Upon an application being made to declare a cemetery abandoned, the municipality within which the cemetery is situated is responsible for the maintenance of the cemetery until the application is disposed of. Maintenance

61. The Registrar may require any owner who has an interest in a cemetery that appears to be abandoned or neglected to maintain that cemetery as a condition of retaining a licence to own a cemetery or crematorium. Dual interest

ADMINISTRATION

62.—(1) There shall be a Registrar appointed for the purposes of this Act. Registrar

(2) There shall be one or more Deputy Registrars appointed who may exercise such powers and perform such duties of the Registrar as are delegated by the Registrar. Deputy Registrars

(3) The Registrar, Deputy Registrars and all other employees necessary for the administration of this Act shall be appointed under the *Public Service Act*. Application of R.S.O. 1980, c. 418

Inspectors

63.—(1) The Registrar may appoint inspectors to carry out inspections for the purpose of determining whether there is compliance with this Act and the regulations.

Certificate of appointment

(2) An inspector exercising a power under this Act shall, on request, produce his or her certificate of appointment.

Inspections

64.—(1) For the purpose of ensuring compliance with this Act and the regulations, an inspector may,

- (a) enter any place at any reasonable time;
- (b) request the production for inspection of documents or things that may be relevant to the inspection;
- (c) inspect and, upon giving a receipt therefor, remove documents or things relevant to the inspection for the purpose of making copies or extracts;
- (d) inquire into negotiations, transactions, loans or borrowings of a licensee and into assets owned, acquired or disposed of by a licensee that are relevant to an inspection;
- (e) conduct such tests as are reasonably necessary to determine the integrity of a structure, fence or marker in a cemetery; and
- (f) remove materials or substances for examination or test purposes subject to the licensee or other occupant of the premises being notified thereof.

Entry to dwellings

(2) Subsection (1) does not apply to confer a power of entry to a room actually used as a dwelling without the consent of the occupier.

Warrant

(3) A justice of the peace may issue a warrant authorizing the person named in the warrant,

- (a) to do anything set out in clause (1) (a), (c), (e) or (f);
- (b) to enter and search a room actually used as a dwelling; or
- (c) to search for and seize any document or thing relevant to the inspection.

(4) A warrant may be issued under subsection (3) if the justice of the peace is satisfied on information under oath that in the case of a warrant to be issued under, Requirements for warrant to issue

(a) clause (3) (a), an inspector has been prevented from doing anything permitted under clause (1) (a), (c), (e) or (f) or there is reasonable ground to believe that an inspector may be prevented from doing any of those things;

(b) clause (3) (b), it is necessary that a room actually used as a dwelling be entered for the purposes of carrying out an inspection or there is, in such a room, a document or thing that there is reasonable ground to believe is relevant to an inspection under this Act; or

(c) clause (3) (c), it is necessary to search for and seize a document or thing that there is reasonable ground to believe will afford evidence relevant to a contravention of this Act or the regulations.

(5) A warrant issued under this section shall specify the hours and days during which it may be executed. Execution of warrant

(6) Unless renewed, a warrant under this section expires not later than thirty days after the date on which it is made. Expiry

(7) A warrant under this section may be issued or renewed upon application without notice. Notice not required

(8) A warrant under this section may be renewed for any reason for which it may be issued. Renewal of warrant

(9) A person doing anything under the authority of a warrant issued under this section is authorized to call on such police officers to assist and to use such force as is necessary in the execution of the warrant. Assistance

(10) An inspector carrying out an inspection, with or without a warrant, may be accompanied by such persons with expertise in the subject-matter of the inspection as the inspector considers necessary. Use of experts

(11) An investigator taking material in order to copy it shall make the copy with reasonable dispatch and shall promptly return the material taken. Copies

(12) Copies of, or extracts from, documents and things removed under this section and certified as being true copies Admissibility of copies

of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

Obstruction
of inspector

65.—(1) No person shall obstruct an inspector in carrying out an inspection under this Act or withhold, destroy, conceal or refuse to provide any relevant information or thing required for the purpose of the inspection.

Facilitating
inspection

(2) It is a condition of each licence issued under this Act that the licensee facilitate an inspection relevant to that licence.

Freezing
assets

66.—(1) If the Director has reasonable and probable grounds to believe that the owner of a cemetery or crematorium is doing or is about to do something that will jeopardize the public interest or the proper care and maintenance of a cemetery, the Director may direct any person holding, having on deposit or controlling assets of the owner or trust funds under the control of the owner to hold the assets or trust funds until further instructions are received from the Director to release a particular asset or trust fund from the direction.

Scope of
direction

(2) In the case of a bank or a corporation, a direction under subsection (1) applies only to the offices, branches or agencies thereof named in the direction.

Application
for directions

(3) Any person named in a direction issued under subsection (1), if in doubt as to the application of the direction to particular assets or trust funds, may apply to the Director for an order of clarification.

Revocation
or
amendment
of direction

(4) On an application of the owner or any other person having an interest therein, the Director may make an order on such conditions as are set out in the order revoking the direction or consenting to the release of a particular asset or trust fund from the direction.

Appeal

(5) Any person affected by a direction or order of the Director made under this section or a refusal to make an order may appeal to the Tribunal.

Restraining
order

67.—(1) If the Director is of the opinion that any person is not complying with this Act or the regulations, despite the imposition of any penalty in respect of the non-compliance and in addition to any other remedy available, the Director may apply to a judge of the High Court for an order directing the person to comply.

(2) Upon an application under subsection (1), the judge ^{Idem} may make the order applied for or such other order as the judge thinks appropriate.

(3) An appeal lies to the Divisional Court from an order ^{Idem} made under subsection (2).

BURIAL SITES

68. No person shall disturb or order the disturbance of a ^{Disturbing burial site prohibited} burial site or artifacts associated with the human remains except,

- (a) on instruction by the coroner; or
- (b) pursuant to a site disposition agreement.

69. Any person discovering or having knowledge of a ^{Unmarked burial sites} burial site shall immediately notify the police or coroner.

70.—(1) The Registrar may order the owner of land on ^{Investigation} which a burial site is discovered to cause an investigation to be made to determine the origin of the site.

(2) Section 68 does not apply to a person investigating the ^{Idem} nature or origin of the site who is disturbing the site in the course of the investigation.

(3) A person conducting an investigation shall do so with ^{Idem} the minimum disturbance to the site that is reasonable in the circumstances.

(4) If the Registrar is of the opinion that an investigation ^{Idem} under subsection (1) would impose an undue financial burden on the land owner, the Registrar shall undertake the investigation.

71.—(1) As soon as the origin of a burial site is deter- ^{Declaration} mined, the Registrar shall declare the site to be,

- (a) an unapproved aboriginal peoples cemetery;
- (b) an unapproved cemetery; or
- (c) an irregular burial site.

(2) For the purpose of subsection (1),

^{Interpretation}

- (a) an irregular burial site is a burial site that was not set aside with the apparent intention of interring therein human remains;
- (b) an unapproved cemetery is land set aside with the apparent intention of interring therein, in accordance with cultural affinities, human remains and containing remains identified as those of persons who were not one of the aboriginal peoples of Canada;
- (c) an unapproved aboriginal peoples cemetery is land set aside with the apparent intention of interring therein, in accordance with cultural affinities, human remains and containing remains identified as those of persons who were one of the aboriginal peoples of Canada.

Definition

(3) For the purposes of this section and section 72, “unapproved” means not approved in accordance with this Act or a predecessor of this Act.

Site disposition agreement

72.—(1) The Registrar, on declaring a burial site to be an unapproved aboriginal peoples cemetery or an unapproved cemetery, shall serve notice of the declaration on such persons or class of persons as are prescribed.

Idem

(2) All persons served with notice under subsection (1) shall enter into negotiations with a view of entering into a site disposition agreement.

Idem

(3) If a site disposition agreement is not made within the prescribed time, the Registrar shall refer the matter to arbitration.

Idem

(4) Despite subsection (3), the Registrar, if of the opinion that an agreement may be reached, may defer referring the matter to arbitration so long as there appears to be a reasonable prospect of an agreement being reached.

Arbitrated settlement

73. The persons named in an arbitrated settlement who have been given the opportunity to fully participate in the arbitration process are bound by the settlement whether they chose to participate or not.

Irregular burial site

74.—(1) An owner of land that contains an irregular burial site shall ensure that the remains found in the site are interred in a cemetery.

(2) No owner of a cemetery interring human remains for an owner of land to whom this section applies may charge more than the prescribed amount for the interment. Charges

75.—(1) No person shall alter or move the remains or marker of a Canadian or Allied veteran or a Commonwealth War Burial without the agreement of the Department of Veterans Affairs (Federal), the Commonwealth War Graves Commission or such other persons and associations as are prescribed. War Graves

(2) Subsection (1) applies with respect to the alteration or removal of the remains or a marker of a Canadian or Allied veteran only if the Department of Veterans Affairs (Federal) contributed to the cost of the interment. Idem

(3) If an agreement is not reached, the person who wants to make the alteration or move may apply to the Registrar for directions. Idem

(4) When an application is made under subsection (3), the Registrar shall instruct the applicant to give notice of the application to such persons and associations as the Registrar considers may have an interest in the matter. Idem

(5) All persons and associations receiving a notice under subsection (4) may make submissions on the matter to the Registrar in such form and manner as the Registrar instructs. Idem

(6) After considering all submissions made, the Registrar shall direct the applicant on the manner of dealing with the remains or marker in question. Idem

(7) Subsection (1) does not apply to a person altering or moving remains or markers in accordance with the direction of the Registrar. Idem

76.—(1) The Lieutenant Governor in Council may make regulations, Regulations

1. prescribing documents, information and notices to be provided in the course of an application;
2. prescribing fees and requiring the payment of fees;
3. providing for the manner in which a deposit required for approval shall be applied or returned;
4. prescribing classes of cemeteries;

5. prescribing, for any notice required to be given under this Act, the type of notice and the manner in which it is to be given;
6. prescribing requirements and standards for the placing and spacing of interments, markers, fixtures, fences or other structures in a cemetery;
7. prescribing the minimum depth of coverage for in-ground burials;
8. prescribing the drains, sewers and other structures for the flow of water required in a cemetery;
9. governing mausolea, columbaria and other structures on or in a cemetery and establishing construction standards;
10. prescribing classes and types of licences;
11. governing the issue of licences and providing for the renewal of licences;
12. governing the term during which each class or type of licence is valid;
13. prescribing conditions that attach to any class or type of licence;
14. providing for posting of bonds and prescribing the amounts thereof;
15. providing for the forfeiture of posted bonds and for the distribution of the proceeds of forfeited bonds;
16. prescribing practices or actions that are evidence of incompetence or lack of honesty and integrity;
17. requiring the approval of the Registrar for promotional and sales material and prescribing the criteria for approval;
18. prescribing the type of promotional and sales material that requires the approval of the Registrar and providing for its submission to the Registrar;
19. governing and prohibiting the use of any promotional or sales material or any practice;

20. prescribing records and information to be kept by licensees;
21. providing for and requiring the submission of records and information and providing for access by agents of the Registrar to records and information;
22. prescribing the form of and conditions to be included in contracts for the sale of interment rights and cemetery supplies and services;
23. prescribing the information to be supplied to purchasers of interment rights and cemetery supplies and services;
24. prescribing the form of and information to be included in certificates of interment rights;
25. prescribing information to be provided to the public, any person or any class of persons and prescribing the manner of providing that information;
26. governing advertising and the manner of soliciting business;
27. requiring the use of any prescribed forms;
28. governing the use of contracts and certificates;
29. governing the uses to which owners may apply income from Care and Maintenance Funds;
30. prescribing records and information on trust funds to be provided to purchasers of interment rights and pre-need supplies or services;
31. governing the establishment, maintenance and operation of trust funds including the Care and Maintenance Fund and the Pre-need Assurance Fund;
32. governing the payment of money into and out of trust funds including the time within which and the circumstance under which payments are to be made;
33. prescribing fees that may be retained by trustees in respect of any type of trust fund;
34. governing the interment, disinterment, disposition and removal of human remains;

35. governing the preparation of disinterred human remains for transportation including prescribing the design and material of container to be used;
36. prescribing standards for the construction, installation, stabilization and preservation of markers and other cemetery supplies and requiring compliance with the standards;
37. governing the standards of care and maintenance required for a cemetery;
38. governing the procedure for approving by-laws made by owners and for revoking any by-laws made by owners;
39. prescribing the criteria that the Registrar shall use in approving by-laws;
40. governing the manner of conducting cremations and dealing with cremated remains;
41. prescribing amounts to be deposited, in trust, to compensate for disposing of cremated remains and regulating the handling of the trust moneys;
42. governing the location and ownership of cemeteries and crematoria;
43. governing prices and the range of prices that may be included on price lists filed with the Registrar by owners;
44. prescribing procedures to be followed in dealing with burial sites and requiring that they be followed;
45. governing arbitration in the absence of a site disposition agreement and requiring compliance with prescribed procedure;
46. prescribing the subject-matters to be contained in a site disposition agreement or arbitration settlement and requiring their inclusion;
47. exempting any person or class of persons, any cemetery or class of cemetery or anything or class of thing from any provision of this Act or the regulations;

- 48. prescribing conditions subsequent or precedent for a prescribed exemption and providing that an exemption may be subject to the Registrar being satisfied that it is not contrary to the public interest;
- 49. prescribing what constitutes notice in any provision where notice is required to be given;
- 50. governing the time for giving any notice for which a time is not set out in this Act and delegating to the Registrar power to extend any prescribed time;
- 51. prescribing anything that is referred to in this Act as being prescribed.

(2) Any regulation may be general or specific or of limited application. Limitation

77. No person shall cause or commit a nuisance in a cemetery or wilfully and unlawfully disturb persons assembled for the purpose of interring human remains in a cemetery. Interfering with cemetery

78.—(1) Any person who, in a cemetery, damages or moves any tree, plant, marker, fence, structure or other thing usually erected, planted or placed in a cemetery is liable to the cemetery owner and any interment rights holder who, as a result, incurs damage. Cause of action

(2) In an action under subsection (1), the amount of damages shall be the amount required to restore the cemetery to the state that it was in before anything was damaged or moved by the person liable. Idem

(3) Any person collecting damages under this section shall use the full amount collected to restore the cemetery. Idem

79.—(1) Every person who, Offence

- (a) furnishes false, misleading or incomplete information in an application under this Act or in a statement or return required to be furnished under this Act or the regulations;
- (b) fails to comply with an order made under this Act; or
- (c) contravenes any provision of this Act or the regulations,

is guilty of an offence.

Idem (2) Every director or officer of a corporation who concurs in an offence under this Act is guilty of an offence.

Idem (3) An individual who is convicted of an offence under this Act is liable to a fine of not more than \$20,000 and, on a subsequent conviction, to a fine of not more than \$20,000 and to imprisonment for a term of not more than one year.

Idem (4) A corporation that is convicted of an offence under this Act is liable to a fine of not more than \$40,000.

Limitation (5) Subject to subsection (6), no proceeding under this section shall be commenced more than two years after the offence was committed.

Idem (6) No proceeding under clause (1) (a) or subsection 35 (2) or 36 (3) or section 68 shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the Registrar.

Restitution (7) If a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to make compensation or restitution in relation thereto.

Certificate as
evidence

80. A statement as to,

- (a) the consent or lack of consent to establish, alter or increase the capacity of a cemetery or crematorium;
- (b) the licensing or non-licensing of any person;
- (c) the filing or non-filing of any document or material required or permitted to be filed with the Registrar;
- (d) the time when the facts upon which proceedings are based first came to the knowledge of the Registrar;
or
- (e) any other matter pertaining to licensing, non-licensing, filing or non-filing,

purporting to be certified by the Registrar is, without proof of the office or signature of the Registrar, admissible in evidence in any proceeding, in the absence of evidence to the contrary, of the facts stated therein.

Municipal
powers

81.—(1) A municipality may expropriate,

(a) a cemetery or part thereof, whether the cemetery exists within or outside the municipality; and

(b) land on which to establish or enlarge a cemetery.

(2) The council of a municipality may pass by-laws author- Idem
izing,

(a) the purchase of a cemetery or part thereof that is situated within the municipality;

(b) the acquisition of land within the municipality or in an adjacent township or unorganized territory for a cemetery or for the enlargement of an existing cemetery owned by the municipality; or

(c) the sale, transfer or lease of a cemetery or part thereof.

82.—(1) If there is an appeal under this Act to the Tribunal
Tribunal, it shall appoint a time for and hold a hearing.

(2) After holding a hearing, the Tribunal may by order Order
direct the Registrar to take an intended action or to refrain from taking an action or to take such action as the Tribunal considers that the Registrar ought to take and for such purposes the Tribunal may substitute its opinion for that of the Registrar.

(3) The Tribunal may attach such conditions to its order or Conditions
to the licence as it considers proper to give effect to the purposes of this Act.

(4) The Registrar, the applicant or licensee who has Parties
required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this Act.

83.—(1) A notice, order or other document under this Service
Act or the regulations is sufficiently given, served or delivered if delivered personally or sent by first class mail addressed to the person to whom it is to be given, served or delivered at that person's last known address.

(2) A notice, order or other document sent by first class Idem
mail in accordance with subsection (1) shall be deemed to be given, served or delivered on the fifth day after the day of mailing, unless the person to whom it is sent establishes that the notice, order or other document was not received until a

later date because of absence, accident, illness or other cause beyond that person's control.

Stay

R.S.O. 1980,
c. 274

84. Despite the fact that a licensee appeals from an order of the Tribunal under section 11 of the *Ministry of Consumer and Commercial Relations Act*, the order takes effect immediately but the Tribunal may grant a stay until the disposition of the appeal.

Surrender of
licence

85. The Registrar may, at any time, cancel a licence upon the written request of the licensee and the surrender of the licence by the licensee.

Transition

86.—(1) An approval given under the *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, shall be deemed to be a consent given under this Act.

Idem

(2) Every person who is an owner on the day this Act comes into force shall be deemed to be licensed under this Act to own the cemetery or crematorium.

Idem

(3) Every person who was employed as a sales representative selling interment rights, cemetery supplies or cemetery services on the day this Act comes into force shall be deemed to be licensed as a sales representative under this Act representing the owner employing that person.

Idem

(4) Subject to subsection (5), subsections (2) and (3) cease to apply one year after this Act comes into force.

Idem

(5) If a person who is deemed, under subsection (2) or (3), to be licensed under this Act applies for a comparable licence under this Act within one year after this Act comes into force, the deemed licence remains in force until the application is finally disposed of.

Idem

(6) Funds set up under the *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, for,

(a) perpetual care shall be deemed to be a Care and Maintenance Fund; and

(b) pre-need supplies or services shall be deemed to be a Pre-need Assurance Fund.

Act prevails

87. This Act prevails over Part VI of the *Ontario Heritage Act*, being chapter 337 of the Revised Statutes of Ontario, 1980.

88. Section 1 of *The Toronto General Burying Grounds Act, 1977*, being chapter 110, is repealed and the following substituted therefor:

1. The Trustees of the Toronto General Burying Grounds may, in addition to its existing powers to acquire and hold land, acquire and hold land and may exercise all its corporate powers with reference thereto. Power to
acquire land

89. The *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, is repealed. Repeal

90. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

91. The short title of this Act is the *Cemeteries Act, 1989*. Short title

